Legislative Proposals Relating to the Excise Tax Act

Notice of Ways and Means Motion and Explanatory Notes

Published by
The Honourable Paul Martin, P.C., M.P.
Minister of Finance

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Department of Finance Canada
Ministère des Finances Canada

Notice of Ways and Means Motion

Notice of Ways and Means Motion to Amend the *Excise tax Act*

That it is expedient to amend the *Excise Tax Act* as follows:

1. (1) Paragraph 176(1)(*a*) of the *Excise Tax Act* is replaced by the following:

(*a*) a registrant is the recipient of a supply made in Canada by way of sale of used tangible personal property (other than a returnable container as defined in subsection 226(1)) that is a usual covering or container of a class of coverings or containers in which property (other than property the supply of which is a zero-rated supply) is delivered,

(2) The portion of paragraph 176(1)(*d*) of the Act before subparagraph (i) is replaced by the following:

(*d*) the registrant pays consideration for the supply that is not less than the total of

(3) Subsections (1) and (2) apply to supplies for which consideration becomes due after July 15, 2002 or that is paid after that day without having become due.

2. (1) Paragraph (*b.1*) of the description of B in subsection 225.1(2) of the Act is repealed.

(2) Subsection (1) applies for the purpose of applying section 226.1 of the Act in determining the net tax of a charity for reporting periods beginning after the last reporting period of the charity that ends within four years after the reporting period of the charity that includes July 15, 2002.

3. (1) The portion of subsection 226(2) of the Act before paragraph (*a*) is replaced by the following:

Separate supply of beverage and container

(2) For the purposes of this section, if a person supplies a beverage in a returnable container in circumstances in which the person typically does not unseal the container,

(2) Section 226 of the Act is replaced by the following:

Definitions

226. (1) The definitions in this subsection apply in this section.

"applicable legislated amount"
« *montant obligatoire applicable* »

"applicable legislated amount" in a province for a returnable container of a particular class means

(*a*) except if paragraph (*b*) applies, the legislated consumers' refund in the province for a returnable container of that class; or

(*b*) if, under an Act of the legislature of the province in respect of recycling, a legislated consumers' refund for a returnable container of that class is specified and an amount (in this paragraph referred to as the "recycler's reimbursement") is also specified that must be paid, otherwise than specifically in respect of the handling of the container, for a used and empty returnable container of that class when supplied by a person who, on acquiring it used and empty, paid an amount as the legislated consumers' refund for the container, but no amount is specified as the amount, or the minimum amount, that must be charged by a distributor in respect of the supply of a filled and sealed returnable container of that class, the recycler's reimbursement.

"consumers' recycler"
« *récupérateur* »

"consumers' recycler", in respect of a returnable container of a particular class in a province, means a person who, in the ordinary course of their business, acquires in the province used and empty returnable containers of that class from consumers for consideration.

"distributor"
« *distributeur* »

"distributor" of a returnable container of a particular class in a province means a person who supplies beverages in filled and sealed returnable containers of that class in the province and charges a returnable container charge in respect of the returnable containers.

"legislated consumers' refund"
« remboursement obligatoire aux consommateurs »

"legislated consumers' refund" in a province for a returnable container of a particular class means the amount, or the minimum amount, that, under an Act of the legislature of the province in respect of recycling, must be paid in certain circumstances to a person of a class that includes consumers for a used and empty returnable container of that class.

"recycler"
« recycleur »

"recycler" of returnable containers of a particular class in a province means

(*a*) a person who, in the ordinary course of their business, acquires used and empty returnable containers of that class (or the material resulting from their compaction) in the province for consideration; or

(*b*) a person who, in the ordinary course of their business, pays consideration to a person referred to in paragraph (*a*) in compensation for that person acquiring used and empty returnable containers of that class and paying consideration for those containers.

"recycling"
« recyclage »

"recycling", in respect of a province, means

(*a*) the return, redemption, reuse, destruction or disposal of returnable containers in the province or of returnable containers in the province and other goods; or

(*b*) the control or prevention of waste or the protection of the environment.

"refund"
« *montant remboursé* »

"refund", at any time in a province, means

(*a*) in relation to a returnable container of a particular class that is supplied used and empty, or that is filled with a beverage that is supplied, at that time in the province,

(i) the greatest of

(A) if there is an applicable legislated amount in the province for returnable containers of that class, that amount,

(B) if the supplier is a consumers' recycler who, in the ordinary course of their business, sells the beverage in returnable containers of that class in the province and the usual returnable container charge that is charged by the supplier when so selling the beverage is not less than the amount (in this clause referred to as the "usual refund") that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, the usual refund,

(C) if the supplier is a consumers' recycler who does not, in the ordinary course of their business, sell the beverage in returnable containers of that class in the province, the amount that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, and

(D) if, at that time,

(I) in accordance with established industry practice, suppliers charge a common amount as the usual returnable container charge when selling the beverage in returnable containers of that class in the province, and

(II) it is not exceptional for the usual amount paid to consumers by consumers' recyclers as consideration for supplies in the province of used and empty returnable containers of that class to vary among the consumers' recyclers,

the greatest of those usual amounts paid to consumers not exceeding the usual returnable container charge, and

(ii) if none of clauses (i)(A) to (D) applies, the portion of the amount that is, at that time, the consideration paid, in the greatest number of cases, by consumers' recyclers for supplies in the province of used and empty returnable containers of that class from consumers that does not exceed the amount that is, at that time, the returnable container charge charged in the greatest number of cases, by suppliers when selling the beverage in returnable containers of that class in the province; and

(*b*) in relation to a returnable container of a particular class in respect of which a supply is made at that time in the province of a service to which subsection (7) applies,

(i) if the supplier is a consumers' recycler, the amount that is, at that time, the usual consideration that the supplier pays for supplies in the province of used and empty returnable containers of that class from consumers, and

(ii) in any other case, the amount that is, at that time, the consideration paid, in the greatest number of cases, by consumers' recyclers for supplies in the province of used and empty returnable containers of that class from consumers.

"returnable container"
« contenant consigné »

"returnable container" in a province means a beverage container of a class of containers that

(*a*) are ordinarily acquired by consumers;

(*b*) when acquired by consumers, are ordinarily filled and sealed; and

(*c*) are ordinarily supplied in the province used and empty by consumers for consideration.

"returnable container charge"
« *droit sur contenant consigné* »

"returnable container charge" at any time means

(*a*) in relation to a returnable container of a particular class containing a beverage that is supplied at that time in a province, the total of all amounts, each of which is charged by the supplier

(i) as an amount in respect of recycling in the province,

(ii) to recover an amount equivalent to the amount referred to in subparagraph (i) that was charged to the supplier, or

(iii) to recover an amount equivalent to the amount charged to the supplier by another supplier for the purpose referred to in subparagraph (ii) or in this subparagraph;

(*b*) in relation to a filled and sealed returnable container containing a beverage that is held by a person at that time for consumption, use or supply in a province,

(i) if the beverage is held at that time by the person for the purpose of making a supply in the province of it in the container, the amount that the person can reasonably expect will be determined under paragraph (*a*) in respect of the container when the beverage is so supplied, and

(ii) in any other case, the amount in respect of the container that would reasonably be expected to be determined under paragraph (*a*) if the beverage were supplied at that time to the person in the province; and

(*c*) in relation to a returnable container of a particular class in respect of which a recycler of returnable containers of that class makes at that time a supply in a province of a service in respect of recycling to a distributor, or a recycler, of returnable containers of that class,

(i) if an Act of the legislature of the province in respect of recycling specifies an amount, or a minimum amount, that must be collected from, or paid by, a recipient in certain circumstances for the supply of a beverage in a returnable container of that class, that amount, and

(ii) in any other case, the amount in respect of the container that would reasonably be expected to be determined under paragraph (*a*) if the container were filled and sealed and contained a beverage that were supplied at that time in the province.

"Specified beverage retailer"
« vendeur au détail déterminé »

"specified beverage retailer", in respect of a returnable container of a particular class, means a registrant

(*a*) who, in the ordinary course of the registrant's business, makes supplies (in this definition referred to as "specified supplies") of beverages in returnable containers of that class to consumers in circumstances in which the registrant typically does not unseal the containers; and

(*b*) who does not meet the circumstance that all or substantially all of the supplies of used and empty returnable containers of that class that are gathered by the registrant at establishments at which the registrant makes specified supplies, are of containers that the registrant acquired used and empty for consideration.

Taxable supply of beverage in returnable container

(2) Subject to subsection (3), for the purposes of this Part, if a supplier makes a particular taxable supply (other than a zero-rated supply) in a province of a beverage in a filled and sealed returnable container of a particular class in circumstances in which the supplier typically does not unseal the container, and the supplier charges the recipient a returnable container charge in respect of the container,

(*a*) the consideration for the particular supply is deemed to be equal to the amount determined by the formula

A - B

where

A is the consideration for the supply as otherwise determined for the purposes of this Part, and

B is the returnable container charge;

(*b*) if the returnable container charge exceeds the refund for the container, the supplier is deemed to have made to the recipient, at the time at which the consideration for the particular supply becomes due or would, but for section 156, have become due, a taxable supply in the province of a service in respect of the container for consideration, separate from the consideration for the beverage, that becomes due at that time and that is, subject to that section, equal to

(i) except where subparagraph (ii) applies, the amount by which the returnable container charge exceeds the refund for the container, or

(ii) if an Act of the legislature of the province is prescribed for the purposes of this paragraph,

(A) if that province is a participating province and that Act, or regulations made under it, specify an amount in respect of a returnable container of that class that must be equal to or not less than the total (in this clause referred to as the "tax-included charge") of the returnable container charge to be charged in respect of the particular supply or a previous supply of the beverage in the container and any applicable tax under this Part, the amount determined by the formula

$$A \times [100/(100 + B)]$$

where

A is the amount by which the tax-included charge exceeds the refund for the container, and

B is the total of the rate of tax under subsection 165(1) and the tax rate for the province, and

(B) in any other case, the amount determined in prescribed manner; and

(*c*) the recipient is deemed to have acquired that service for the same purpose as that for which the recipient acquired the beverage.

Exception for specified beverage retailer

(3) Subsection (2) does not apply to a supply by a registrant of a beverage in a returnable container in respect of which the registrant is a specified beverage retailer if the registrant elects not to deduct the amount of the returnable container charge in respect of the container in

determining the consideration for the supply for the purposes of this Part.

Supply of used container

(4) If a person makes a particular supply in a province of a used and empty returnable container (or the material resulting from its compaction),

(*a*) the value of the consideration for the particular supply is deemed, for the purposes of this Part other than this section, to be nil; and

(*b*) if the consideration exceeds the refund for the container, the supplier is deemed, for the purposes of this Part, to have made to the recipient, at the time at which the consideration for the particular supply becomes due or would, but for section 156, have become due, a taxable supply in the province of a service in respect of the container for consideration, that is separate from the consideration for the particular supply, equal to the excess amount.

Exception

(5) Subsection (4) does not apply

(*a*) for the purposes of section 5 of Part V.1 or section 10 of Part VI of Schedule V; or

(*b*) to a supply made in a province of a used and empty returnable container of a particular class (or the material resulting from its compaction) if the usual business practice of the recipient is to pay consideration for supplies in the province of used and empty returnable containers of that class (or the material resulting from their compaction) that is determined based on the value of the material from which the containers are made or is otherwise determined based neither on the amount of the refund for the returnable containers nor on the amount of the returnable container charge in respect of filled and sealed returnable containers of that class containing beverages that are supplied in the province.

Supply of recycling service to distributor

(6) For the purposes of this Part (other than section 5 of Part V.1 and section 10 of Part VI of Schedule V), if

(*a*) a recycler of returnable containers of a particular class makes a particular taxable supply in a province of a service in respect of the

recycling of returnable containers of that class to a distributor of returnable containers of that class who is not a recycler who supplies such services to other distributors of returnable containers of that class,

(*b*) the recycler does not supply the containers to the distributor, and

(*c*) the consideration for the supply is based in whole or in part on the amount in that province of the returnable container charge in respect of returnable containers of that class or on an amount that a consumer could reasonably expect to receive for a used and empty returnable container of that class,

the value of the consideration for the particular supply is deemed to be equal to the amount determined by the formula

A - B

where

A is the consideration for the particular supply as otherwise determined for the purposes of this Part, and

B is the total of all amounts each of which is the returnable container charge in that province for a returnable container in respect of which that consideration is paid or payable.

Supply between recyclers

(7) For the purposes of this Part, if a recycler of returnable containers of a particular class makes a particular taxable supply in a province of a service in respect of the recycling of returnable containers of that class to another recycler of returnable containers of that class without supplying the containers to the other recycler and the consideration for the supply is based in whole or in part on the amount in that province of the refund, or the returnable container charge, in respect of returnable containers of that class, the value of the consideration for the particular supply is deemed to be equal to the amount determined by the formula

A - B

where

A is the consideration for the particular supply as otherwise determined for the purposes of this Part, and

B is the total of all amounts each of which is the refund in that province for a returnable container in respect of which that consideration is paid or payable.

Special rules in the case of prescribed provincial Act

(8) Subject to subsection (9), if a registrant acquires, in a province in which an Act prescribed for the purposes of paragraph (2)(*b*) applies, a beverage in a returnable container for the purpose of making in that province a taxable supply of the beverage in the container in circumstances in which the registrant will charge a returnable container charge in respect of the container and be required to collect tax in respect of the supply,

(*a*) if a supply of a service in respect of the container is deemed under that paragraph to have been made to the registrant, the tax in respect of the supply of the service shall not be included in determining an input tax credit of the registrant; and

(*b*) if the registrant makes a supply in that province of the beverage in circumstances in which the registrant is deemed under that paragraph to have made a supply of a service in respect of the container, neither the consideration for the supply of that service nor any tax in respect of that supply shall be included in determining the net tax of the registrant.

Non-application of special rules

(9) If a registrant is deemed under paragraph (2)(*b*) to have received or made at any time a supply in a province of a service in respect of a returnable container of a particular class containing a particular beverage, paragraph (8)(*a*) or (*b*), as the case may be, does not apply in respect of the supply if

(*a*) the usual business practice of the registrant at that time is to charge, when making supplies in the province of the particular beverage contained in returnable containers of that class, a returnable container charge that is not equal to the returnable container charge the registrant pays in respect of returnable containers of that class containing the particular beverage when supplies of the beverage are made to the registrant in the province; or

(*b*) the registrant is a specified beverage retailer in respect of the container and elects under subsection (3) not to deduct the amount of the returnable container charge charged by the registrant in

determining the consideration for the supply by the registrant of the beverage in the returnable container.

Change in practice – beginning to apply special rules

(10) If, after changing their usual business practice with respect to supplies of a particular beverage in returnable containers of a particular class from the practice described in subsection (9), a registrant makes, at a particular time, in a province in which an Act prescribed for the purposes of paragraph (2)(*b*) applies, a supply of the particular beverage in a returnable container of that class in circumstances in which the registrant is deemed under that paragraph to have made a supply of a service in respect of the container and that supply of the beverage is the first supply by the registrant of the particular beverage in a returnable container of that class in respect of which paragraph (8)(*b*) applies since the change in practice, the registrant is deemed, for the purposes of this Part,

(*a*) to have made, at the particular time, a taxable supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage

(i) that was, immediately before the particular time, held by the registrant for the purpose of making a taxable supply of the beverage in the province in circumstances in which the registrant would be deemed under paragraph (2)(*b*) to have made a supply of a service in respect of the container, and

(ii) that was last supplied to the registrant in the province in circumstances in which the registrant was deemed under that paragraph to have received a supply of a service in respect of which the registrant was entitled to claim an input tax credit or would have been so entitled if tax would, but for section 156 or 167, have been payable in respect of that supply of the service; and

(*b*) to have collected, at the particular time, tax in respect of each supply of a service in respect of a returnable container that is deemed under paragraph (*a*) to have been made by the registrant equal to the tax that was payable or would, but for section 156 or 167, have been payable by the registrant in respect of the supply to the registrant of the service referred to in subparagraph (*a*)(ii) in respect of that container.

Change in practice – ceasing to apply special rules

(11) If, after changing their usual business practice with respect to supplies of a particular beverage in returnable containers of a particular class to the practice described in subsection (9), a registrant makes, at a particular time, in a province in which an Act prescribed for the purposes of paragraph (2)(*b*) applies, a supply of the particular beverage in a returnable container of that class in circumstances in which the registrant is deemed under that paragraph to have made a supply of a service in respect of the container and the supply is the first supply by the registrant of the particular beverage in a returnable container of that class in respect of which paragraph (8)(*b*) would have applied but for the change in practice, the registrant is deemed, for the purposes of this Part,

(*a*) to have received, at the particular time, for use exclusively in a commercial activity of the registrant, a taxable supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage

(i) that was, immediately before the particular time, held by the registrant for the purpose of making a taxable supply of the beverage in the province in circumstances in which the registrant would be deemed under paragraph (2)(*b*) to have made a supply of a service in respect of the container, and

(ii) that was last supplied to the registrant in circumstances in which the registrant was deemed under that paragraph to have received a supply of a service in respect of which, owing solely to paragraph (8)(*a*), the registrant was not entitled to claim an input tax credit or would not have been so entitled if tax would, but for section 156 or 167, have been payable in respect of that supply of the service; and

(*b*) to have paid, at the particular time, tax in respect of each supply of a service in respect of a returnable container that is deemed under paragraph (*a*) to have been received by the registrant equal to the tax that was or would, but for section 156 or 167, have been payable by the registrant in respect of the supply to the registrant of the service referred to in subparagraph (*a*)(ii) in respect of that container.

Ceasing to be registrant while special rules apply

(12) If a person who makes supplies of a particular beverage in filled and sealed returnable containers of a particular class in a province in which an Act prescribed for the purposes of paragraph (2)(*b*) applies ceases at any time to be a registrant, the person is deemed, for the purposes of this Part,

(*a*) to have received, immediately before that time, a supply of a service in respect of each filled and sealed returnable container of that class containing the particular beverage that was held by the person immediately before that time and in respect of which paragraph (8)(*b*) would have applied if the beverage in the container had been supplied by the person immediately before that time in circumstances in which the person would have been deemed under paragraph (2)(*b*) to have made a supply of a service in respect of the container; and

(*b*) to have paid, immediately before that time, tax in respect of each supply of a service in respect of a returnable container that is deemed under paragraph (*a*) to have been received by the person equal to the tax that was payable or would, but for section 156 or 167, have been payable by the person in respect of the supply to the person of the service that was deemed under paragraph (2)(*b*) to have been made to the person when the person acquired the beverage.

Supplies under s.167

(13) For the purposes of this Part, if a registrant makes a taxable supply of a beverage in a filled and sealed returnable container under an agreement for the supply of a business or part of a business in circumstances in which subsection 167(1.1) applies to the supply and the registrant is deemed under subsection (2) to have made a supply of a service in respect of the container, the supply of the service is deemed to have been made under the agreement and not to be a service referred to in subparagraph 167(1.1)(*a*)(i).

Deemed tax collected where s. 156 or 167 applies

(14) For the purposes of this Part, if

(*a*) a supplier makes a supply in a province of a beverage in a filled and sealed returnable container to a registrant and is deemed under paragraph (2)(*b*) to have made at any time a supply to the registrant of a service in respect of the container,

(*b*) because of section 156 or 167, no tax is payable in respect of the supplies to the registrant of the beverage and of the service,

(*c*) by reason only of paragraph (8)(*a*), the registrant would not have been entitled to claim an input tax credit in respect of the tax that would, but for that section, have been payable in respect of the supply of the service, and

(*d*) paragraph (8)(*b*) does not apply in respect of the supplies to the registrant of the beverage and the service in determining the net tax of the supplier,

the registrant is deemed to have made at that time a particular taxable supply in the province of a service in respect of the container for consideration equal to the amount that would, without reference to section 156, be the value of the consideration for the supply of the service that is deemed under paragraph (2)(*b*) to have been made to the registrant in respect of the container and the registrant is deemed to have collected at that time tax in respect of the particular supply calculated on that consideration.

Deemed tax paid where s. 156 or 167 applies

(15) For the purposes of this Part, if

(*a*) a supplier makes a supply in a province of a beverage in a filled and sealed returnable container to a registrant and is deemed under paragraph (2)(*b*) to have made at any time a supply to the registrant of a service in respect of the container,

(*b*) because of section 156 or 167, no tax is payable in respect of the supplies to the registrant of the beverage and of the service,

(*c*) paragraph (8)(*a*) would not have applied to the registrant in respect of the tax that would, but for that section, have been payable in respect of the supply of the service, and

(*d*) paragraph (8)(*b*) applies in respect of the supplies by the supplier to the registrant of the beverage and the service in determining the net tax of the supplier,

the registrant is deemed to have received at that time a particular taxable supply in the province of a service in respect of the container for consideration equal to the amount that would, without reference to section 156, be the value of the consideration for the supply of the service that is deemed under paragraph (2)(*b*) to have been made to the

registrant in respect of the container, the registrant is deemed to have paid at that time tax in respect of the particular supply calculated on that consideration and the registrant is deemed to have acquired that service for the same purpose as that for which the registrant acquired the beverage.

Fair market value of beverage in filled and sealed container

(16) For the purposes of this Part, if a beverage in a filled and sealed returnable container in respect of which there is a returnable container charge is held at any time by a person for consumption, use or supply in a province in the course of commercial activities of the person, the fair market value of the beverage at that time is deemed not to include the amount that would be determined as the refund for the container if the beverage were supplied in the province by the person at that time in the filled and sealed container.

Basic tax content of beverage in filled and sealed container

(17) The basic tax content at any time of a beverage in a filled and sealed returnable container that is held at that time by a person shall be determined as if the tax payable, if any, in respect of the last supply of a service in respect of the container that was deemed under subsection (2) or (15) to have been made to the person, and the tax payable, if any, in respect of the last supply of a service in respect of the container that was deemed under subsection (14) to have been made by the person, were additional tax payable by the person in respect of the last acquisition of the beverage by the person.

Addition to net tax

(18) If

(*a*) a registrant makes a supply in a province of a beverage in a returnable container of a particular class in respect of which the registrant is a specified beverage retailer,

(*b*) paragraph (2)(*a*) applies in determining, for the purposes of this Part, the consideration for the supply, and

(*c*) the registrant makes at any time a supply in the province of that container used and empty for consideration without having acquired it used and empty for consideration,

the registrant shall, in determining the net tax of the registrant for the reporting period that includes that time, add the amount determined by the formula

A x B

where

A is

(*a*) if the province is a participating province, the total of the rate of tax under subsection 165(1) and the tax rate for the province, and

(*b*) in any other case, the rate of tax under subsection 165(1), and

B is the refund for a returnable container of that class in the province.

(3) Subsection (1) applies to any supply of a beverage in a returnable container made after 1995 and before May 1, 2002, unless

(*a*) the supplier included, in determining their net tax, a particular amount as or on account of tax that was calculated on the total amount (excluding any gratuity or tax prescribed for the purposes of section 154 of the Act) paid or payable by the recipient in respect of the beverage and the container and, before ANNOUNCEMENT DATE, the Minister of National Revenue received an application for a rebate under subsection 261(1) of the Act of the portion of the particular amount attributed to the container, or

(*b*) the supplier included, in determining their net tax as reported in a return received by the Minister of National Revenue before ANNOUNCEMENT DATE, an amount as or on account of tax in respect of the supply of the beverage and the container that was calculated on an amount less than the total amount (excluding any gratuity or tax prescribed for the purposes of section 154 of the Act) paid or payable by the recipient in respect of the beverage and the container.

(4) Subsection (2) is deemed to have come into force on May 1, 2002 and applies to supplies for which consideration becomes due on or after that day or is paid on or after that day without having become due, except that

(*a*) for the purposes of applying sections 176 and 226.1 of the Act to supplies of returnable containers for which consideration

becomes due on or before July 15, 2002 or that is paid on or before that day without having become due, section 226 of the Act shall be read as if subsection (2) had not come into force; and

(*b*) subsections 226(4), (6) and (7) of the Act, as enacted by subsection (2), do not apply to supplies for which consideration (determined without reference to those subsections) is paid or becomes due on or before July 15, 2002.

4. (1) The Act is amended by adding the following after section 226:

Non-application of exemption

226.01. Section 5.1 of Part V.1 of Schedule V and section 6 of Part VI of that Schedule do not apply to a supply of a used and empty returnable container (as defined in section 226) or to a supply of the material resulting from its compaction.

(2) Section 226.01 of the Act is repealed.

(3) Subsection (1) applies to supplies for which consideration becomes due after 1996 or is paid after 1996 without having become due.

(4) Subsection (2) applies to supplies for which consideration becomes due after July 15, 2002.

5. (1) The portion of subsection 226.1(1) of the Act after subparagraph (*e*)(ii) is replaced by the following:

the charity may, in determining the net tax for its reporting period in which the particular supply is made or for a subsequent reporting period, deduct the amount determined by the formula

A x B

where

A is

(*a*) if the particular supply is made in a participating province, the total of 7% and the tax rate for that province, and

(*b*) in any other case, 7%, and

B is the refundable deposit.

(2) Section 226.1 of the Act is repealed.

(3) Subsection (1) applies to any supply of a container made to a charity after March 1998.

(4) Subsection (2) applies to supplies for which consideration becomes due after July 15, 2002 or that is paid after that day without having become due.

6. (1) Subparagraph (*a*)(i) of the definition "non-creditable tax charged" in subsection 259(1) of the Act is replaced by the following:

> (i) tax in respect of the supply, importation or bringing into a participating province of the property or service that became payable by the person during the period or that was paid by the person during the period without having become payable (other than tax deemed to have been paid by the person or in respect of which the person is not entitled to claim an input tax credit only because of section 226),

(2) Subsection (1) is deemed to have come into force on May 1, 2002.

7. (1) The Act is amended by adding the following after section 263.1:

Rebates in respect of beverages in returnable containers

263.2 For the purposes of sections 252, 260 and 261.1, if a person is the recipient of a supply of a beverage in a filled and sealed returnable container or of a used and empty returnable container (or the material resulting from its compaction) and the supplier is deemed under paragraph 226(2)(*b*) or (4)(*b*) to have made to the person a taxable supply of a service in respect of the container, tax paid in respect of the supply of the service is deemed to have been paid in respect of the supply of the beverage, empty container or property, as the case may be.

(2) Subsection (1) is deemed to have come into force on May 1, 2002.

8. (1) Section 22 of Part I of Schedule X to the Act is replaced by the following:

22. Property (other than a specified motor vehicle) that is brought into a participating province by a registrant (other than a registrant whose net tax is determined under section 225.1 of the Act or under Part IV or V of the *Streamlined Accounting (GST/HST) Regulations*) for consumption, use or supply exclusively in the course of commercial activities of the registrant.

(2) Subsection (1) applies to property brought into a participating province on or after May 1, 2002.

Explanatory Notes

These explanatory notes are provided to assist in an understanding of the proposed amendments to the *Excise Tax Act*. These notes are intended for information purposes only and should not be construed as an official interpretation of the provisions they describe.

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Section 1

Acquisition of Used Returnable Containers

ETA
176(1)

Existing section 176 deems tax to have been paid by a registrant in certain circumstances where the registrant has acquired used returnable containers from a person not required to charge tax, (e.g., where a consumer returns used containers to a redemption centre in exchange for a refund). The effect is that the registrant may be able to claim an input tax credit for the tax component of the amount refunded.

The amendment to paragraph 176(1)(*a*) excludes returnable containers, as defined in amended subsection 226(1), from the ambit of section 176 since the effect of the amendments to section 226 is to exclude refundable deposits on beverage containers for taxable products from the GST/HST tax base. Accordingly, section 176 no longer needs to apply to those containers, as there would no longer be any tax component in the refund for them.

The amendment applies to used containers for which consideration becomes due or is paid (i.e., refunds are given) after July 15, 2002, which is 75 days after the implementation date of May 1, 2002 for the changes to section 226. There is therefore a 75-day transition period during which registrants may continue to be able to claim input tax credits in respect of the acquisition of used containers regardless of whether any tax was originally charged on the container deposits. This reflects the fact that the deposits on returnable beverage containers already in circulation at the time of implementation of the amendments to section 226 include an amount of tax. It should be noted that, for the purpose of applying section 176 during that 75-day transition period, existing section 226 applies. For example, the definition "returnable container" in existing subsection 226(1) continues to apply for purposes of section 176 throughout the transition period.

Section 2

Net Tax Calculation for Charities

ETA
225.1(2)

Section 225.1 sets out a streamlined accounting method by which registrants that are charities calculate their net tax.

Under element B of the net tax formula in subsection 225.1(2), a charity may claim certain input tax credits or deductions from net tax. Paragraph (*b*.1) of the description of element B enables a charity operating a bottle return depot to claim a net tax deduction in respect of returnable containers for which it pays refunds of deposits. The total amount refunded by the charity includes, where applicable, the provincially-mandated deposit and GST/HST calculated on that deposit. Therefore, the charity is entitled to a net tax deduction for the tax component of the amount it refunds in respect of the deposit equal to 7% (or 15% where the charity is in an HST-participating province). The circumstances in which the net tax deduction may be claimed and the calculation of the amount of the deduction are set out in section 226.1.

Paragraph (*b*.1) is repealed since the effect of amendments to section 226 is to exclude refundable deposits on beverage containers for taxable products from the GST/HST tax base. Accordingly, paragraph (*b*.1) is no longer needed, as refunds would no longer include any tax.

The application rule for the repeal of paragraph (*b*.1) reflects the fact that charities have, in effect, four years to claim a deduction under that paragraph to which they have become entitled. The entitlement, based on the application of section 176, extends up to and including July 15, 2002. Since the related amendments to section 226 apply as of May 1, 2002, there is a 75-day transition period during which a charity continues to be entitled to claim the deduction in respect of refunds paid on returned beverage containers, regardless of whether any tax was originally charged on the container deposits, provided of course that all other conditions for claiming the deduction are met. This reflects the fact that the deposits on returnable beverage

containers already in circulation on May 1, 2002 would include an amount of tax.

It should be noted that, for the purpose of applying paragraph (*b*.1) of the description of element B of the formula in subsection 225.1(2) during that 75-day transition period, existing section 226 applies. For example, the definition of "returnable container" in existing subsection 226(1) continues to apply throughout the transition period for the purpose of determining the amount that may be deducted by a charity under subsection 226.1(1).

Section 3

Returnable Containers

ETA
226

Section 226 sets out the GST/HST rules relating to returnable beverage container deposits.

Subsection 3(1)

Separate Supply of Beverage and Container

ETA
226(2)

Existing subsection 226(2) deems the supply of a beverage in a returnable container to be separate from the supply of the container. The purpose of this deeming provision is to segregate the container from the beverage so that the general rule, in subsection 226(3), excluding amounts from the registrant's net tax applies only to the tax attributed to the container. The purpose of this deeming provision is also to ensure that the general rule, in subsection 226(4), that a registrant may not claim an input tax credit with respect to tax paid or payable on purchases of beverages in returnable containers applies only to the tax attributed to the container.

Subsection 226(2) is amended to specify that the supply of a beverage in a returnable container is separate from the provision of

the container only in circumstances in which the supplier typically does not unseal the container when serving the beverage to the customer. This is in accordance with the policy intent that no part of the charge to the consumer for the beverage should be attributed to the container in this circumstance since it is one in which the supplier normally retains the container for a refund of the deposit. This is typically the case with eat-in restaurants and bars.

This amendment generally applies to supplies made after 1995 and before May 1, 2002, when section 226 is repealed and replaced. However, this amendment does not apply if the supplier applied for a refund of tax the supplier attributed to the container in an application received at an office of the Canada Customs and Revenue Agency before Announcement Date. It also does not apply if the supplier had already accounted for the tax on the supply of the beverage, in a return received by the Agency before Announcement Date, by excluding an amount that the supplier attributed to the container.

Subsection 3(2)

Returnable Beverage Containers

ETA
226

Section 226 sets out the GST/HST rules relating to returnable beverage container deposits. Under amended section 226, the non-refundable portion of a deposit continues to be subject to tax if the supply of the beverage is taxable. However, the refundable portion of a deposit is excluded from the GST\HST tax base.

Amended section 226 comes into force on May 1, 2002 and applies to supplies for which consideration becomes due on or after that day or is paid on or after that day without having become due. There are, however, two exceptions to this rule. First, existing section 226 continues to apply for the purposes of applying sections 176 and 226.1 of the Act to supplies of used returnable containers for which consideration is paid or becomes due on or before July 15, 2002. Second, new subsections 226(4), (6) and (7) do not apply to supplies for which consideration is paid or becomes due on or before July 15, 2002.

Consequently, there is a 75-day transition period during which registrants may continue to be able to claim input tax credits in respect of the acquisition of used containers regardless of whether any tax was originally charged on the container deposits. This reflects the fact that the deposits on returnable beverage containers already in circulation at the time of implementation of the amendments to section 226 include an amount of tax. As noted, for the purpose of applying section 176 during that 75-day transition period, existing section 226 applies. For example, the definition "returnable container" in existing subsection 226(1) continues to apply for purposes of section 176 throughout the transition period.

Subsection 226(1) Definitions

Subsection 226(1) defines the following terms used in amended section 226.

"applicable legislated amount"

In most cases, the "applicable legislated amount" in a province for a returnable container is the "legislated consumers' refund" (also defined in subsection 226(1)) that is provided for under an Act of the legislature of the province in respect of the recycling of returnable containers. The "legislated consumers' refund" is essentially the amount that, under that Act, must be paid to a consumer as a refund for a used and empty returnable container.

Paragraph (*b*) of the definition "applicable legislated amount" alternatively applies if, under an Act of the legislature of the province in respect of recycling, a legislated consumers' refund for a returnable container of that class is specified as well as an amount referred to as the "recycler's reimbursement".

The "recycler's reimbursement" is an amount that must be paid for a used and empty returnable container of that class to a person who paid an amount as the legislated consumers' refund for the container when acquiring it used and empty. Also, the recycler's reimbursement must be an amount that is paid otherwise than specifically as a handling charge. Finally, in order for paragraph (*b*) to apply, no amount must be specified, under an Act of the legislature of the province, as the amount, or the minimum amount, that must be

charged by a distributor in respect of the supply of a filled and sealed container of that class.

Therefore, paragraph (*b*) applies where the provincial legislation provides for an amount of the refund that must be paid to a consumer returning a returnable container of a particular class but does not provide for the deposit in respect of the sale of a beverage in a container of that class. If the legislation also provides for an amount that must be paid to the person who accepted the container from a consumer, otherwise than as any kind of handling charge, that amount would be the "applicable legislated amount".

As an example, assume a provincial Act stipulates that the refund for a returnable beverage container of a particular class must be at least $0.17 but does not specify any amount of deposit that must be charged in relation to the supply of a beverage in a returnable container of that class. Also assume that the Act stipulates that beverage distributors in the province must pay (aside from any handling charge) $0.20 per container to bottle depots in the province for each returnable container of that class they collect. The "applicable legislated amount" would be $0.20.

The term "applicable legislated amount" is used in the definition "refund" in subsection 226(1).

"consumers' recycler"

The term "consumers' recycler", in respect of returnable containers of a particular class, refers to a person who, in the ordinary course of their business, acquires used and empty returnable containers of that class from consumers for consideration (i.e., who pays refunds to consumers for empty containers). It includes, for example, bottle depots and retailers who accept returns of beverage containers. The term "consumers' recycler" is used in the definition "refund" in subsection 226(1).

"distributor"

A "distributor" of a returnable container of a particular class refers to a person who supplies beverages in filled and sealed returnable containers (as defined in subsection 226(1)) of that class and who charges a "returnable container charge" (also defined in subsection

226(1)) in respect of the returnable containers. A distributor can be, for example, a bottler, a wholesaler or a retailer of beverages in filled and sealed returnable containers. The term "distributor" is used in the definitions "applicable legislated amount" and "returnable container charge" in subsection 226(1) and is also used in subsection 226(6).

"legislated consumers' refund"

The term "legislated consumers' refund", in a province for a returnable container of a particular class, refers to the amount, or the minimum amount, that, under an Act of the legislature of the province in respect of recycling, must be paid in certain circumstances to a consumer for a used and empty returnable container of that class. The term "legislated consumers' refund" is used in the definition "applicable legislated amount" in subsection 226(1).

"recycler"

A "recycler" of returnable containers of a particular class is defined as a person who, in the ordinary course of their business, acquires used and empty returnable containers (as defined in subsection 226(1)) of that class, or the material resulting from their compaction, for consideration (i.e., for refunds). A "recycler" also includes a person who pays consideration to another person in compensation for that other person acquiring used and empty returnable containers of that class and paying consideration for those containers. The term "recycler" is used in the definition "returnable container charge" in subsection 226(1) and in subsections 226(6) and (7).

For example, a recycler can be a retailer or a redemption centre operator who accepts empty containers from consumers and pays refunds. A recycler would also include a bottler who buys back used and empty refillable beverage containers. An example of a recycler included in paragraph (*b*) of this definition is a corporation or provincial board that pays amounts to redemption centres or retailers in compensation for those centres or retailers accepting used and empty returnable containers and paying refunds.

"recycling"

The term "recycling" refers to the return, redemption, reuse, destruction or disposal of returnable containers (as defined in subsection 226(1)) or of returnable containers and other goods. The term also more generally refers to the control or prevention of waste or the protection of the environment. The term "recycling" is used in the definitions "applicable legislated amount", "legislated consumers' refund" and "returnable container charge" in subsection 226(1), as well as in subsections 226(6) and (7).

"refund"

The term "refund" is used throughout new section 226. Under the new rules of section 226, the refundable portion of a deposit on a returnable beverage container is excluded from the GST\HST base. In the case of a taxable supply of a beverage, the GST/HST continues to apply to the non-refundable portion (if any) of the returnable container charge (as defined in subsection 226(1)). The taxable portion of the returnable container charge is the portion that is greater than the refund.

The "refund" for a returnable container is defined with reference to a province and a particular time, since this amount may vary from province to province and over time. The term is also defined in relation to a container of a particular class. For example, the refund for a 355ml aluminium can may not be the same as the refund for a plastic beverage container.

The term "refund" is defined for purposes of its application in three different contexts. Under paragraph (*a*) of the definition, the term "refund" is defined in relation to a returnable container of a particular class that is being supplied used and empty, and in relation to a returnable container of a particular class that contains a beverage that is being supplied. Under paragraph (*b*) of the definition, the term is defined in relation to a returnable container of a particular class in respect of which a supply is being made of a service to which subsection 226(7) applies.

Under subparagraph (a)(i), the "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the greatest of the amounts described in clauses

(*a*)(i)(A) to (D). The refund is defined as the greatest of these amounts because consumers may receive varying amounts depending on where they return the containers.

In the majority of cases, the "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the provincially-mandated amount that is paid in the province to a consumer that returns the used container to a retailer or other redemption centre. That amount is referred to in clause (*a*)(i)(A) of the definition "refund" as the "applicable legislated amount" and, in most cases, it will be the amount defined in subsection 226(1) as the "legislated consumers' refund".

Clause (*a*)(i)(B) deals with a case of a supply of the beverage in a container of a particular class where the supplier acquires used containers of that class from consumers and pays refunds. The amount under this clause is the usual refund paid to consumers by that supplier for containers of that class, provided it does not exceed the usual returnable container charge that the supplier charges for containers of that class.

Clause (*a*)(i)(C) deals with a case of a supply of a used and empty container by a supplier who accepts used containers of that class from consumers for refunds but who does not sell the beverage in those containers (e.g., a bottle depot). The amount under this clause is the usual refund that the supplier pays consumers for the used containers.

Clause (*a*)(i)(D) could apply in the context of a supply of the beverage in the container or in the context of a supply of the used container. Clause (D) deals with the situation where there is an established industry practice of suppliers charging a common amount as a returnable container charge. However, in the case described by clause (D), consumers can typically obtain varying amounts of refunds for the used containers depending on where they return them (e.g., to a retailer or a bottle depot). The amount under clause (D) is the greatest of those amounts paid to consumers, not exceeding the usual returnable container charge.

To illustrate the application of clause (D), assume a regulation under a provincial Act stipulates that the refund for a returnable container must be at least $0.05 and retailers commonly charge $0.10 as a returnable container charge. If bottle depots in the province pay a

refund of $0.05 per container but retailers pay $0.10 per container, the "refund" for all such containers in that province would be considered to be $0.10 for the purposes of section 226.

The "refund" for a returnable container that is being supplied used and empty, or that contains a beverage that is being supplied, is the amount described in subparagraph (*a*)(ii) if none of clauses (a)(i)(A) to (D) applies, i.e.,

- there is no applicable legislated amount in the province for the returnable container,

- the supplier does not accept used containers of that class from consumers, and

- there is no established industry practice as described in clause (*a*)(i)(D) with respect to containers of that class.

In that case, the refund for purposes of section 226 is the portion of the refund paid in the greatest number of cases by consumers' recyclers in the province that does not exceed the returnable container charge that, in the greatest number of cases, beverage suppliers in the province charge for containers of that class.

To illustrate the application of subparagraph (*a*)(ii), assume a retailer who does not accept used containers sells beverages in filled and sealed containers of a particular class in a province in which there is no applicable legislated amount for a returnable container of that class. Also assume that, in that province, most consumers' recyclers pay $0.05 as a refund for used containers of that class and most suppliers charge a deposit of $0.05 when selling the beverage in the containers. The refund, in relation to that retailer's supply of the beverage in the container is $0.05, since it is the amount paid to consumers in most cases and it does not exceed the returnable container charge that is charged in most cases by suppliers in the province.

The term "refund" is also defined, under paragraph (*b*) of the definition, specifically for purposes of applying subsection 226(7). That subsection deals with circumstances such as where a recycling corporation pays a depot consideration for accepting used and empty returnable containers and paying refunds to consumers, but the

corporation does not acquire those containers from the depot. In this example, in determining the consideration on which tax applies to the depot's services, the corporation can deduct the amount of the refund for the containers and, for that purpose, the "refund" is defined as the usual refund paid by the depot to consumers.

Subsection 226(7) also deals with a potential case of a recycler who does not accept used and empty containers but who provides services in respect of recycling to another recycler. In that case, the refund amount that is deducted in determining the consideration for the service is taken to be the usual refund paid in the greatest number of cases by persons in the province who accept used and empty containers from consumers.

"returnable container"

The term "returnable container" is used throughout new section 226 and is defined, in relation to a province, as a beverage container of a class of containers that, in that province, are ordinarily acquired by consumers filled and sealed and are ordinarily returned empty by consumers for an amount of money (i.e., a refund). Accordingly, a class of container (e.g., a 355ml aluminium can) may constitute a returnable container in one province and not in another since it may be sold with a refundable deposit in some provinces and without a refundable deposit in others.

Where a taxable beverage in a container is sold without a refundable deposit in a province, that container is not a returnable container for the purposes of section 226. Given that section 137 of the Act deems the container to form part of the beverage, any tax-excluded amount charged in respect of the container will form part of the consideration for the beverage and therefore also be subject to GST/HST.

It should be noted that the containers falling within the definition "returnable container" under new section 226 are not restricted to containers for taxable beverages. However, the rule under new subsection 226(2) that treats the container deposit differently from the amount charged for the beverage does not apply when the beverage is supplied on a zero-rated basis. In that case, section 137 continues to apply such that the container deposit for the beverage supplied on a zero-rated basis forms part of the consideration for the beverage and therefore has the same tax-free status.

"returnable container charge"

The term "returnable container charge" is defined in relation to a returnable container (as defined in subsection 226(1)) containing a beverage that is being supplied or held as inventory by a person. The term is also defined in relation to a returnable container in respect of which a recycler is making a supply of a recycling service to a distributor or to another recycler.

In the case of a returnable container of a particular class that contains a beverage that is being supplied in a province, the "returnable container charge" is the total of all amounts charged by the supplier in respect of the recycling (as defined in subsection 226(1)) of returnable containers of that class, or to recover an equivalent amount charged to the supplier for the same purpose. Accordingly, the returnable container charge would include, for example, any provincially-mandated amount such as a refundable deposit, a non-refundable portion of a deposit, an environmental levy or a handling charge. If there is no provincially-mandated amount, the returnable container charge includes any amount in respect of the recycling of the containers that is charged in a particular industry or by a particular supplier.

Also, the returnable container charge would include any amounts charged by a supplier to recover amounts previously charged to that supplier in respect of the containers. For example, a provincially-mandated amount in respect of recycling could be required to be charged only on supplies of a beverage by bottlers who are the first vendors of the beverage in the province. Subsequently, a wholesaler will charge the equivalent amount to a retailer to recover the amount paid by the wholesaler to a bottler. This latter amount is referred to in subparagraph (*a*)(ii) of the definition of "returnable container charge". In turn, the retailer will charge the equivalent amount to a consumer to recover the amount paid by the retailer to the wholesaler. This latter amount is referred to in subparagraph (*a*)(iii) of the definition.

In relation to a filled and sealed returnable container containing a beverage that is held by a person in inventory at any time in a province for the purpose of making a supply of the beverage in that province, the term "returnable container charge" refers to the amount that the person can reasonably expect will be determined to be the returnable container charge in respect of the container when the

beverage is so supplied (i.e., the total amount in respect of recycling that will be charged by the supplier).

In relation to a filled and sealed returnable container containing a beverage that is held by a person at any time in a province for a purpose other than the sale of the beverage in the container, the term "returnable container charge" means the amount in respect of the container that could reasonably be expected to be paid by the person if they were acquiring the beverage in the container at that time in the province.

Finally, paragraph (*c*) of the definition "returnable container charge" defines this term in relation to a returnable container of a particular class in respect of which a recycler of returnable containers of that class is supplying a service in respect of recycling in a province to a distributor or to another recycler of returnable containers of that class. These are the situations dealt with in subsections 226(6) and (7).

In this case, the "returnable container charge" is the amount, or minimum amount, that is required, under an Act of the legislature of the province in respect of recycling, to be paid in respect of the supply of a beverage in a returnable container of that class. In some provinces, there is no such legislated amount for particular classes of containers but there is instead an industry-established container charge for those containers. In that case, the "returnable container charge" is that amount in respect of the container that would reasonably be expected to be charged by a supplier in the province when selling a beverage in a container of that class.

"specified beverage retailer"

The term "specified beverage retailer" is relevant to subsections 226(3), (9) and (18). The term is defined in relation to a returnable container of a particular class. A "specified beverage retailer" refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when serving the beverages. Further, in order for a registrant to be considered a "specified beverage retailer" it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or

other recycler are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

In contrast, the operator of, for example, a regular grocery store at which the operator sells beverages in filled and sealed returnable containers of a particular class and also accepts returns of used containers of that class from consumers would likely not be a specified beverage retailer in respect of those containers. In that case, it would be expected that all or substantially all of the used containers that the store operator gathers at the store and returns to a recycler would have been acquired from consumers for refunds.

Subsection 226(2) Taxable Supply of Beverage in Returnable Container

Subsection 226(2) applies where a supplier makes a taxable supply (other than a zero-rated supply) of a beverage in a filled and sealed returnable container (as defined in subsection 226(1)) in circumstances in which the supplier typically does not unseal the container, and the supplier charges a returnable container charge (also as defined in subsection 226(1)) in respect of the container.

Paragraph 226(2)(*a*) deems the consideration for the supply of the beverage to be equal to the amount obtained by subtracting the returnable container charge from the consideration for the supply as otherwise determined for the purposes of Part IX of the Act. Section 137 deems the container to form part of the beverage. Therefore, the consideration for the supply determined under Part IX without regard to paragraph 226(2)(*a*) is the total of the consideration for the beverage and the returnable container charge.

For example, if $1.00 is charged for the beverage and $0.10 is charged as a returnable container charge, the consideration for the

supply of the beverage would otherwise be determined to be $1.10. Paragraph 226(2)(*a*) then deems the consideration for the supply of the beverage in the container to be $1.00 (i.e., $1.10 - $0.10).

Under paragraph 226(2)(*b*), where the returnable container charge exceeds the refund for a returnable container, the supplier is deemed to have made to the recipient, at the time at which the consideration for the beverage becomes due (or would, but for section 156, have become due), a taxable supply of a service in respect of the container. The consideration for this deemed supply is considered to be separate from the consideration for the beverage. The value of the consideration for the deemed supply is determined under subparagraph 226(2)(*b*)(i) or (ii).

Paragraph 226(2)(*b*) results in tax on part of the returnable container charge only when it exceeds the refund (as defined in subsection 226(1)) for the returnable container. Consequently, for every class of container where the refund is equal to the returnable container charge in a province, the returnable container charge will not be taxable in that province. In other words, a fully refundable deposit for a returnable container is not subject to GST/HST.

Subparagraph 226(2)(*b*)(i) applies where the returnable container charge in respect of the container is not provided for under a provincial Act prescribed for purposes of subparagraph 226(2)(*b*)(ii). The provincial Acts that are intended to be prescribed are those that provide for only partially refundable tax-included amounts, or tax-included minimum amounts, that must be charged in respect of the recycling of containers in the province. As of the introduction of new section 226, the only such provincial Acts are those of the HST participating provinces and therefore subparagraph 226(2)(*b*)(i) applies everywhere except in those provinces.

Subparagraph 226(2)(*b*)(i) provides that the consideration for the supply of the service deemed to have been made by the supplier under paragraph 226(2)(*b*) is equal to the amount by which the returnable container charge exceeds the refund for the container. Example 1 illustrates the calculation of the total tax payable in a hypothetical case of a non-HST participating province (i.e., where there is no prescribed provincial Act) where only half of the deposit is refundable.

Example 1 – Non-Participating Province and Half-Back Deposit	
• Taxable beverage sold in a returnable container	$1.00
• Returnable container charge	$0.10
• Refund	$0.05
Deemed consideration for the beverage [$1.10 – $0.10]:	$1.00
Deemed consideration for the deemed supply of a service [$0.10 – $0.05]:	$0.05
Total taxable consideration	$1.05
Total GST payable [1.05 x 7%]:	$0.0735

Subparagraph 226(2)(*b*)(ii) provides the rule for determining the value of the consideration for the supply of a service deemed to have been made by the supplier under paragraph 226(2)(*b*) in the situation where an Act of the legislature of the province is prescribed under that paragraph. This is the case where, under the provincial Act (including any regulations thereunder), an amount in respect of a returnable container of a particular class must be charged in the province when a beverage in that class of container is sold in the province. In addition, the amount specified must be a tax-included amount.

The intention is to prescribe the following Acts of the Provinces of Nova Scotia, New Brunswick and Newfoundland and Labrador:

- The *Environment Act*, SNS 1994-95 c. 1, under which the *Solid Waste-Resource Management Regulations* are made,

- The *Beverage Containers Act* SNB 1991 c. B-2.2, under which the *General Regulation – Beverage Containers Act* is made, and

- the *Waste Management Act* SN 1998 c. W-3.1, under which the *Waste Management Regulations* are made.

Under clause 226(2)(*b*)(ii)(A), the value of the consideration for the service is equal to the non-tax portion of the amount provided for under the prescribed Act that exceeds the refund for the container.

Example 2 illustrates the calculation of the total tax payable in this instance.

Example 2 – Participating Province and Half-Back Deposit	
• Taxable beverage sold in a returnable container	$1.00
• Tax-included legislated amount required to be charged	$0.10
• Refund	$0.05
Deemed consideration for the beverage [$1.10 – $0.10]:	$1.00
Deemed consideration for the deemed supply of a service [Legislated Amount ($0.10) – Refund ($0.05)] x 100/115]:	$0.0435
Total taxable consideration	$1.0435
Total HST payable [1.0435 x 15%]:	$0.1565

Clause 226(2)(*b*)(ii)(B) provides authority to make regulations to determine the consideration for the deemed supply in respect of the container in the case of a non-participating province should similar need for a formula arise in the case of a non-participating province in the future.

Under paragraph 226(2)(*c*), the recipient is considered to have acquired the deemed service for the same purpose as that for which the recipient acquired the beverage. This completes the deeming rule for purposes of determining the extent to which the recipient may be entitled under section 169 to claim an input tax credit for the tax calculated on the non-refundable portion of the returnable container charge.

Subsection 226(3) Exception for Specified Beverage Retailer

Subsection 226(3) provides an exception to the rule under subsection 226(2) with respect to beverage containers of a particular class for a registrant who is a "specified beverage retailer" in respect of those containers, as defined in subsection 226(1). Specifically, subsection (2) does not apply to a supply by such a retailer of a beverage in a container of that class if the registrant elects not to deduct the amount

of the returnable container charge in respect of the container in determining the consideration for the supply of the beverage for GST/HST purposes. The registrant may choose to do so to avoid having to later add, under subsection 226(18), an amount to the registrant's net tax in respect of any returns by the registrant of the used containers that are left with the registrant by the consumers of the beverages.

A "specified beverage retailer", in respect of a particular class of returnable containers, refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when serving the beverages. Further, for a registrant to be considered a "specified beverage retailer" it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or other recycler, are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

The deduction, under subsection (2), of the refundable container deposit from the consideration applicable to the sale of the beverage gives the appropriate result where the purchaser of the beverage retains the container in order to obtain the refund of the deposit. This is not the case where the beverage retailer instead retains the container for the refund. Therefore, under subsection (18), a specified beverage retailer must add to their net tax an amount of tax calculated on the refund they receive for the container unless the retailer had elected, under subsection (3), to charge tax on the entire amount paid for the beverage and the container when the beverage was sold.

Subsection 226(4) Supply of Used Container

Subsection 226(4) provides that a supplier (e.g., a retailer who accepts used and empty returnable containers) who supplies a used and empty returnable container (or the material resulting from its compaction) to a person (e.g., a recycling corporation) can deduct the amount of the refund for the container in determining the consideration for the supply for GST/HST purposes. However, if the consideration as otherwise determined exceeds the refund for the container, the supplier is deemed to have made to the recipient a separate taxable supply of a service in respect of the container for consideration equal to that excess amount.

It should also be noted that, if two separate supplies are made of the used container (or the material resulting from its compaction) and of a service of handling the container, the rule in subsection 226(4) applies only to the supply of the container or the material.

Subsection 226(4) is subject to the exceptions set out in subsection 226(5).

Subsection 226(5) Exceptions

Subsection 226(5) describes the situations where subsection 226(4) do not apply, that is, where the refund for a returnable container is not subtracted from the value of the consideration for a supply of the used and empty container or of the material resulting from its compaction.

First, subsection 226(4) does not apply for the purposes of section 5 of Part V.1, or section 10 of Part VI, of Schedule V to the Act. In other words, the rule in subsection 226(4) deeming the consideration for a supply of a used and empty returnable container (or the material resulting from its compaction) to be nil does not apply for the purposes of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body.

Second, subsection 226(4) does not apply where the usual business practice of the recipient is to pay consideration for supplies in the province of used and empty returnable containers of the particular class (or of the material resulting from their compaction) that is

determined based on the value of the material from which the containers are made, or on any basis other than the amount of the refund or returnable container charge for the containers.

For example, if a supply of used and empty aluminium returnable containers were made by a recycler to an aluminium producer for consideration equal to $1.00 per pound, subsection 226(4) would not apply.

Subsection 226(6) Supply of Recycling Service to Distributor

Subsection 226(6) applies where a recycler (as defined in subsection 226(1)) of returnable containers of a particular class makes a taxable supply in a province of a service in respect of the recycling of returnable containers of that class to a distributor (as defined in subsection 226(1)), but does not sell the containers to the distributor. Where this subsection applies, the distributor is not a recycler who also supplies such services to other distributors. Also, the consideration for the supply must be based in whole or in part on the amount in that province of the returnable container charge in respect of returnable containers of that class or on an amount that a consumer could reasonably expect to receive for a used and empty returnable container of that class.

For example, assume a distributor of a beverage is required, under a provincial act in respect of the protection of the environment, to have a plan for the recycling of the container in which the beverage is sold. In order to fulfil this obligation and be entitled to sell the beverage in the province, the distributor contracts with a corporation having a recycling system in place. Assume further that the corporation does not supply the used and empty containers to the distributor but provides a service in respect of the recycling of the containers and charges a fee equal to the deposit that the distributor is required to charge to its clients when selling the beverage in the province. If the distributor does not also provide such recycling services to other distributors, subsection 226(6) will apply to the transaction between the corporation and the distributor.

Under the formula in subsection 226(6), the consideration for the service is the amount as otherwise determined for purposes of Part IX minus the total of the returnable container charges for all the

returnable containers in respect of which the consideration for the service is attributable.

Examples 3 and 4 illustrate the calculation of the total tax payable where a distributor contracts with a recycler for a service in respect of the recycling of the returnable containers that the distributor supplies filled and sealed in a province.

Example 3 – Recycling Services Supplied to Distributor – per Container	
• Returnable container charge in respect of a filled and sealed container:	$0.10
• Actual consideration for the service in respect of the container:	$0.10
Deemed consideration for the service [Actual consideration – Returnable container charge]:	$0.00
Total GST payable [$0 x 7%]:	$0.00

Example 4 – Recycling Services Supplied to Distributor – 1000 Containers	
• Returnable container charge per filled and sealed containers:	$0.10
• Actual consideration for the service (assumed equal to the returnable container charge plus $0.02 handling charges per container):	$0.12
Deemed consideration for the service [Actual consideration – Returnable container charge] x 1000:	$20.00
Total GST payable [$0.02 x 7%] x 1000:	$1.40

It is important to note that subsection 226(6) does not apply for the purposes of section 5 of Part V.1, or section 10 of Part VI, of Schedule V to the Act. In other words, the rule in subsection 226(6) does not apply for the purpose of determining if a supply falls into the exemption provision for supplies of property or services ordinarily supplied free of charge by a charity or a public sector body.

It should also be noted that subsection 226(6) does not apply if the distributor is also receiving from the recycler a supply of the empty containers themselves. In that case, subsection 226(4) applies instead.

Subsection 226(7) Supply Between Recyclers

Subsection 226(7) applies where a recycler (as defined in subsection 226(1)) of returnable containers of a particular class makes a taxable supply of a service in respect of the recycling of returnable containers of that class without supplying the containers to the other recycler. Also, the consideration for the supply must be based in whole or in part on the amount of the refund (as defined in subsection 226(1)), or the returnable container charge (also as defined in subsection 226(1)), in respect of returnable containers of that class.

Under the formula in subsection 226(7), the consideration for the service is deemed to be the amount as otherwise determined for the purposes of Part IX minus the total of all refunds for all returnable containers in respect of which that consideration is paid or payable.

Example 5 illustrates the calculation of the total tax payable where a recycling corporation pays consideration to a redemption centre for accepting used and empty returnable containers and paying refunds.

Example 5 – Supply Between Recyclers – 1000 Containers	
• Refund per container:	$0.05
• Actual consideration for the service per container (assumed equal to the refund for the container plus $0.02 handling charge):	$0.07
Deemed consideration for the service [Actual consideration – Refund] x 1000:	$20.00
Total GST payable [$0.02 x 7%] x 1000:	$1.40

It should be noted that subsection 226(7) does not apply if the recycler who is the recipient of the service is also acquiring the used and empty containers themselves. In that case, subsection 226(4) applies instead.

Subsection 226(8) Special Rules in the Case of Prescribed Provincial Act

Subsection 226(8) sets out special rules applicable in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). These special simplifying rules apply in provinces where only a partial refund of the deposit is provided for under the applicable provincial legislation and where the legislated amount of the deposit is a tax-inclusive amount (i.e., Nova Scotia, New Brunswick and Newfoundland and Labrador).

Subject to subsection 226(9), subsection 226(8) applies where a registrant purchases a beverage in a returnable container for the purpose of selling the beverage in the province in circumstances in which the registrant will charge a returnable container charge in respect of the container and be required to collect tax in respect of the sale. If the registrant had paid a tax-included non-refundable amount as a returnable container charge when acquiring the beverage, that amount would have been deemed under paragraph (2)(*b*) to have been consideration paid by the registrant for a separate service. In these circumstances, paragraph 226(8)(*a*) provides that the registrant is not entitled to claim an input tax credit in respect of that amount. The input tax credit is denied because the registrant is concurrently relieved of having to include, in determining the registrant's net tax, any amount of tax in respect of the returnable container charge when the registrant in turn sells the beverage in the returnable container.

For example, if a retailer in a province in which an Act prescribed for the purpose of paragraph 226(2)(*b*) charged the same tax-inclusive amount of deposit as the retailer paid (e.g., $0.10), the special rules would apply to the retailer. Assume $0.05 were the amount of the non-refundable tax-included deposit. The retailer would not have to include the HST component of the $0.05 charged to the consumer in the retailer's HST remittances but would include the HST on the beverage. The retailer would accordingly not be entitled to include the HST component of the $0.05 deposit paid to the retailer's supplier in determining the retailer's input tax credit. The retailer would be entitled to claim an input tax credit in respect of the HST paid on the beverage.

For registrants using a streamlined accounting method to determine their net tax, the amount determined under paragraph (2)(*b*) as the consideration for the deemed service, as opposed to the HST component of the tax-included non-refundable deposit, is the amount in respect of the deposit that is excluded in determining their net tax.

Subsection 226(9) Non-application of Special Rules

Subsection 226(9) describes circumstances in which paragraphs 226(8)(*a*) and (*b*) do not apply. The first circumstance is where it is the usual business practice of the registrant to charge, when selling in the province a particular beverage in a returnable container of a particular class, a returnable container charge that is not equal to the returnable container charge the registrant pays in respect of returnable containers of that class containing the particular beverage.

The special rules under subsection (8) are meant to apply only where the amount of input tax credits to which a registrant would be entitled in respect of the non-refundable deposits on returnable containers for beverages acquired by the registrant is equal to the amount of the tax component of non-refundable deposits the registrant charges in respect of sales of the beverages in the returnable containers.

It is important to note that the ineligibility to use the special rules under subsection 226(8) is determined in respect of a particular beverage sold in returnable containers of a particular class. A registrant may therefore be entitled to use the special rules for some beverages and not for others if the registrant's usual business practice varies with respect to the different products.

For example, if the registrant is the first vendor to charge a returnable container charge in respect of a beverage container in a province (e.g., where the registrant imports a particular type of beverage and does not pay any returnable container charge to the registrant's out-of-province suppliers), the registrant would not follow the special rules with respect to that product. However, that would not affect the eligibility of the registrant to use the special rules for another beverage for which the registrant pays to the registrant's supplier the same amount of returnable container charge as the registrant charges to customers.

The second circumstance in which paragraph 226(8)(*a*) does not apply to deny an input tax credit to a registrant for the purchase of a beverage in a returnable container of a particular class is where the registrant is a specified beverage retailer (as defined in subsection 226(1)) in respect of containers of that class. Subsection 226(8)(*a*) does not apply as long as the registrant elects under subsection (3) not to deduct the amount of the returnable container charge in respect of the container in determining the consideration for the supply by the registrant of the beverage in the container. In that case, the registrant is required to charge the recipient tax on the entire amount paid for the beverage and the container, and the registrant must include the full amount of that tax in the registrant's net tax.

Subsection 226(10) Change in Practice

Subsection 226(10) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Subsection 226(10) deals with the case where a registrant changes their usual business practice with respect to a particular beverage such that the registrant becomes eligible to use the special rules under subsection 226(8) with respect to that beverage.

In other words, subsection 226(10) applies where the registrant starts to charge, when selling the beverage in the province, a returnable container charge that is equal to the returnable container charge the registrant pays when acquiring the beverage. The registrant would have previously claimed input tax credits for tax paid on the tax-included non-refundable portion of the deposit paid on the acquisition of any beverage held in the registrant's inventory at the time of the change in practice. However, under the special rules that will apply to the sale of that inventory subsequent to the change in practice, the registrant neither includes the non-refundable portion of the deposit charged to customers, nor any tax included in that amount, in determining the net tax of the registrant.

Therefore, subsection 226(10) requires the registrant, in those circumstances, to account for tax on each item of that inventory equal to the input tax credit that was previously claimed, or that the registrant would, but for section 156 or 167, have been entitled to claim in respect of each item of that inventory.

Subsection 226(11) Change in Practice – Ceasing to Apply Special Rules

Subsection 226(11) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Subsection 226(11) deals with the case where a registrant changes their usual business practice with respect to a particular beverage such that the registrant ceases to be eligible to use the special rules under subsection 226(8) with respect to that beverage.

In other words, subsection 226(11) where the registrant starts to charge, when selling the beverage in the province, a returnable container charge that is not equal to the returnable container charge the registrant pays when acquiring the beverage. The registrant would not have claimed input tax credits for tax paid on the tax-included non-refundable portion of the deposit paid on the acquisition of any beverage held in the registrant's inventory at the time of the change in practice. However, since the special rules will not apply to the sale of that inventory subsequent to the change in practice, the registrant will have to include the non-refundable portion of the deposit charged to customers, or any tax included in that amount, in determining the net tax of the registrant.

Therefore, as a result of the deemed acquisition and payment of tax under subsection 226(11), the registrant, in those circumstances, is allowed to claim input tax credits in respect of each item of that inventory equal to the input tax credits that were previously denied or that would have been denied if tax had been payable but for section 156 or 167.

Subsection 226(12) Ceasing to be a Registrant While Special Rules Apply

Subsection 226(12) applies in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (i.e., where the special rules under subsection 226(8) apply). Where a person ceases to be a registrant, subsection 171(3) results in the person having to account for tax on all items of inventory then held by the person for sale in the course of a commercial activity. That rule presumes that the person would have been entitled to claim input tax credits for those items. However, in the case of the person's inventory of

beverages in returnable containers, the person would not have been entitled to claim input tax credits for the tax included in the non-refundable portion of the container deposits if the person had been subject to the special rules under subsection 226(8) immediately before ceasing to be a registrant.

In this situation, the person is deemed under subsection 226(12) to have received, immediately before ceasing to be a registrant, a supply of a service in respect of each item of that inventory and is deemed to have paid tax in respect thereof. That tax is equal to the tax that was, or would, but for section 156 or 167, have been included in the non-refundable portion of the container deposits. Consequently, the registrant is able to claim input tax credits for that tax, assuming all other conditions for claiming the credits are met.

Subsection 226(13) Supplies Under Section 167

Subsection 226(13) addresses a case where filled and sealed returnable containers are held in the inventory of a business at the time it is sold. Subsection 167(1.1) sets out the rules that apply when, under an agreement to supply a business or part of a business, the supplier and recipient jointly elect under subsection 167(1) to treat certain supplies made under the agreement as non-taxable. This tax treatment generally does not apply to taxable services that are to be rendered by the supplier.

Subsection 226(13) ensures that the supply of a service that is deemed under subsection 226(2) to be made when the supplier sells the beverage is essentially ignored for purposes of applying the roll-over rules in section 167. Therefore, the inventory of filled and sealed returnable containers will be treated the same under the agreement for the sale of the business as is other inventory.

Subsection 226(14) Deemed Tax Collected Where Section 156 or 167 Applies

Subsection 226(14) applies only in respect of a taxable supply (other than a zero-rated supply) of a beverage contained in a filled and sealed returnable container of a particular class in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). It deals with certain supplies of

beverages in filled and sealed returnable containers that are not subject to tax because of section 156 or 167.

In the cases in question, the supplier would have been entitled to claim an input tax credit in respect of the tax component of the deposit amount included in the total amount paid when acquiring the beverages but the recipient will not have to account for tax in respect of the deposits when re-supplying the beverage because the recipient is subject to the special rules under subsection 226(8). Subsection 226(14) requires the recipient to include tax calculated on the non-refundable portion of the container deposits in determining net tax for the reporting period in which the beverages are acquired.

Subsection 226(15) Deemed Tax Paid Where Section 156 or 167 Applies

Subsection 226(15) applies only in respect of a taxable supply (other than a zero-rated supply) of a beverage contained in a filled and sealed returnable container of a particular class in a province in which an Act prescribed for the purposes of paragraph 226(2)(*b*) applies (see commentary on subsection 226(2)). It deals with supplies of beverages in filled and sealed returnable containers that are not subject to tax because of section 156 or 167.

In the cases in question, the supplier would not have been entitled to claim an input tax credit in respect of the tax component of the deposit amount included in the total amount paid when acquiring the beverages but the recipient will have to account for tax in respect of the deposits when re-supplying the beverage because the recipient is not allowed to use the special rules under subsection 226(8). Under subsection 226(15), the recipient is entitled to claim an input tax credit, in determining net tax for the reporting period in which the beverages are acquired, equal to tax calculated on the non-refundable portion of the container deposits.

Subsection 226(16) Fair Market Value of Beverage in Filled and Sealed Container

Subsection 226(16) specifies how to determine, for purposes of Part IX of the Act, the fair market value of a beverage in a filled and sealed returnable container in respect of which there is a returnable container charge where that beverage is held at any time by a person

for consumption, use or supply in a province in the course of commercial activities of the person. That fair market value is deemed not to include the amount that would be determined as the refund for the container if the beverage were supplied in the province by the person at that time in the filled and sealed container.

This rule is relevant to the application of section 171 where a person ceases to be a registrant and must account for tax based on the fair market value of inventory held at that time.

Subsection 226(17) Basic Tax Content of Beverage in Filled and Sealed Container

Subsection 226(17) provides a rule for determining the basic tax content (as defined in section 123(1)) at any time of a beverage in a filled and sealed returnable container that is held at that time by a person. The rule ensures that the basic tax content of the beverage includes the tax that was payable on the non-refundable portion of the container deposits paid when initially acquiring the containers or when the person was deemed to have made a supply under subsection 226(14) or to have received a supply under subsection 226(15).

This rule is pertinent to section 171 of the Act where a person becomes at any time a registrant and is entitled to claim input tax credits determined based on the basic tax content of property held at that time.

Subsection 226(18) Addition to Net Tax

Subsection 226(18) requires a registrant who is a specified beverage retailer (as defined in subsection 226(1)) to add an amount in determining the net tax of the registrant in certain circumstances.

A "specified beverage retailer", in respect of a particular class of returnable containers, refers to a registrant who, in the ordinary course of their business, sells to consumers beverages in containers of that class in circumstances in which the registrant typically does not unseal the containers when selling the beverages. Further, for a registrant to be considered a "specified beverage retailer", it must not be the case that all or substantially all of the used containers that are gathered at establishments at which the registrant makes such supplies of beverages and that are then returned by the registrant to a depot or

other recycler are containers that have been returned to the registrant for refunds.

For example, an operator of a restaurant that is a combination eat-in, take-out establishment might sell beverages in filled and sealed returnable containers of a particular class but the only containers of that class that the registrant gathers at such establishments and returns are those that are left behind by customers who have chosen to consume the beverages on the premises. In that case, the registrant would be a specified beverage retailer in relation to returnable containers of that class.

Under subsection 226(2), a registrant can deduct the refundable beverage container deposit from the consideration applicable to the sale of the beverage. That gives the appropriate result where the purchaser of the beverage retains the container in order to obtain the refund of the deposit. This is not the case where the beverage retailer instead retains the container for the refund.

Therefore, under subsection (18), a specified beverage retailer must add to their net tax an amount of tax calculated on the refund they receive for the container unless the retailer had elected, under subsection (3), to charge tax on the entire amount paid for the beverage and the container when the beverage was sold. Where the registrant so elects, subsection (2) does not apply and therefore neither does subsection (18) since paragraph (18)(*b*) restricts the application of this rule to circumstances in which paragraph (2)(*a*) applies.

Section 4

Non-application of Exemption

ETA
226.01

Section 5.1 of Part V.1 of Schedule V to the Act, and section 6 of Part VI of that Schedule, each describe a supply, made by a charity and public service body respectively, that is exempt based on the amount charged for the supply in relation to the "direct cost" of the supply. The direct cost of a supply is essentially the direct material

cost, in the case of goods produced by the charity or body, or the purchase price paid by the charity or body, in the case of property or services purchased for resale. The consequence of the exemption is that the supply is not considered to be part of a commercial activity and the supplier, while not having to collect tax on the supply, is not able to claim related input tax credits.

New section 226.01 provides that these direct cost exemptions do not apply to a supply of a used and empty returnable container (as defined in section 226) or to a supply of the material resulting from its compaction. In the returnable container recycling industry it is typical for a recycler to acquire used and empty containers for a consideration equal to the refund for that class of container. The recycler will then sell the containers or the material resulting from their compaction for a lesser consideration to another person who will recycle the material. The activity is economic for the recycler because the recycler is typically also in receipt of amounts of deposits in respect of the containers from a distributor or another recycler.

New section 226.01 ensures that, when the recycler is a charity or other public service body, its supplies of used and empty containers (or the material resulting from their compaction) are not treated as exempt supplies solely due to the direct cost exemption provisions. Consequently, such a recycler may be able to claim input tax credits for related inputs in the same manner as other recyclers that are engaged in the same activity and that are not charities or other public service bodies, provided their activity is not otherwise an exempt activity and all other conditions for claiming the input tax credits are met. It is important to note that, in the case of charities, the exemption under section 1 of Part V.1 of Schedule V for the sale of tangible personal property that was used by another person before its acquisition by the charity may still apply.

New section 226.01 applies to supplies of used and empty returnable containers (or the material resulting from their compaction) for which consideration becomes due after 1996 or is paid after 1996 without having become due. This application corresponds to the enactment of section 5.1 of Part V.1 of Schedule V to the Act.

New section 226.01 is not required following the coming into force of new subsection 226(4), which deems the value of the consideration for the supply of a used and empty returnable container (or the

material resulting from its compaction) to be nil. Accordingly, the amount charged by the recycler for the supply can reasonably be expected to be greater than zero and thus greater than the direct cost. Consequently, the direct cost exemptions will not apply to a supply of a used and empty returnable container or to a supply of the material resulting from its compaction. Therefore, new section 226.01 will cease to apply to supplies of used and empty returnable containers (or the material resulting from their compaction) for which consideration becomes due after July 15, 2002.

Section 5

Deduction for Charity

ETA
226.1

Subsection 226.1 applies where a charity operates an authorized bottle return depot in a province in the course of exempt activities and refunds a provincially-mandated refundable deposit. In this case, the charity is allowed to claim a net tax deduction (which could result in a net tax refund) equal to 7% (or 15% where the province is an HST-participating province) of the refundable deposit. To be entitled to this deduction, the charity must pay the refundable deposit, plus an amount equal to the deduction, to the person from whom it collects the container.

Subsection 226.1(1) is amended to ensure that a charity has the same amount of time to claim the deduction as the charity would have if the amount were instead claimed as an input tax credit. The amendment adds the reference to "a subsequent reporting period" in subsection 226.1(1). This amendment is for greater certainty as subsection 226.1(2) already explicitly provides for a four-year period to claim the deduction.

This amendment applies to any supply of a container made to a charity after March 1998, the date of the coming into force of section 226.1.

A second amendment repeals section 226.1 since new section 226 excludes refundable deposits on beverage containers from the

GST/HST tax base. There will therefore be no tax component in the refund paid for the used and empty containers.

This amendment applies to supplies for which consideration becomes due after July 15, 2002 or that is paid after that day without having become due. The delay of 75 days between the coming into force of the amendments to section 226 (May 1, 2002) and the repeal of section 226.1 reflects the fact that the deposit on returnable beverage containers in circulation at the time of implementation of new section 226 includes an amount of tax. This 75-day transition period will allow those containers to reach a redemption centre and for the operator to claim the related deduction in respect of them. For the purpose of applying section 226.1 during that 75-day transition period, existing section 226 is to be read as if it had not been replaced by new section 226. For example, the meaning of "returnable container" under existing subsection 226(1) continues to apply during the transition period for the purposes of section 226.1.

Section 6

Definition "non-creditable tax charged"

ETA
259(1)

Section 259 provides for rebates to charities, substantially government-funded non-profit organizations and other public service bodies (i.e., universities, public colleges, school authorities, hospital authorities and municipalities). The term "non-creditable tax charged" refers to amounts that such an entity is or was required to pay as GST/HST (net of input tax credits or other rebates) and is not otherwise recoverable by the entity.

Under the definition "non-creditable tax charged", an amount of tax in respect of a returnable container that the entity would otherwise not be entitled to recover under the special rules for returnable container deposits in section 226 is not eligible to be rebated under section 259. The definition thus contains a cross-reference to existing subsection 226(4).

The amendment to the definition "non-creditable tax charged" is consequential on the amendments to section 226. Under new section 226, the restrictions on the claiming of input tax credits are found under a new subsection. Therefore, the amendment to the definition "non-creditable tax charged" replaces the reference therein to subsection 226(4) with a reference to section 226. This amendment comes into force on May 1, 2002.

Section 7

Rebates in Respect of Beverages in Returnable Containers

ETA
263.2

Under sections 252, 260 and 261.1, rebates are provided for exported goods and goods removed from HST participating provinces in certain circumstances. New section 263.2 addresses a case where a person purchases a beverage in a returnable container and is charged a non-refundable container deposit. In that case, the tax in respect of the non-refundable container deposit is deemed under new section 226 to be in respect of a deemed supply of a service received by the person.

New section 263.2 also addresses a case where a person has purchased used and empty returnable containers (or the material resulting from their compaction) for consideration in excess of the refundable deposits for the containers. In that case, the tax on the excess amount is deemed under new section 226 to be in respect of a service received by the person.

In both cases, without new section 263.2, the person would not be entitled to a rebate under any of sections 252, 260 and 261.1 for the tax amount since it is considered to be in respect of a service instead of a good. New section 263.2 ensures that the tax is considered to be part of the tax on the beverage for purposes of those rebate provisions.

New section 263.2 comes into force on May 1, 2002.

Section 8

Goods Brought into a Participating Province

ETA
Schedule X, Part I, section 22

Section 22 of Part I of Schedule X to the Act describes goods that are relieved from the tax imposed under Division IV.1 of Part IX of the Act (i.e., the provincial component of the HST) on bringing the goods into an HST participating province. Generally, relief is provided for goods brought in by a registrant for consumption, use or supply exclusively in the course of commercial activities of the registrant. In that case, if the tax were not relieved, the registrant would otherwise be entitled to claim a full input tax credit for the tax.

Existing section 22 excludes returnable beverage containers from relief from the tax payable under Division IV.1. This is because, under existing rules, a registrant would not be entitled in all cases to claim an input tax credit for the tax component of the container deposits even if the beverages in the filled and sealed containers were brought in exclusively for supply in the course of commercial activities of the registrant. Under existing section 226, registrants are disallowed from claiming these input tax credits if the registrants are, in turn, not required to include in their net tax the tax component of the container deposits when selling the beverages in the filled and sealed containers.

The existing exclusion in section 22 of Part I of Schedule X for returnable containers is not necessary under the amended rules for returnable containers in section 226 (see commentary on that section). Under those rules, a registrant is entitled to claim input tax credits for tax (including the tax on the container deposit) in respect of beverages in filled and sealed returnable containers that are brought into a participating province. It is only in circumstances where a beverage in a filled and sealed container is both purchased and sold in a participating province that the registrant may be denied the input tax credit (see commentary on subsection 226(8)).

This amendment applies to containers brought into a participating province on or after May 1, 2002.